

**Before the
Federal Communications Commission
445 12th Street SW, Washington, DC 20554**

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Request for Review of the)	
Decision Dated October 18, 2005)	
of the)	Billed Entity Number 3877
Universal Service Administrator)	
)	Form 471 Application Number
472924)	
by)	
)	CC Docket No. 02-6
Sweetser)	
50 Moody Street, Saco, Maine 04072)	
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Sweetser respectfully requests review by the Federal Communications Commission of the above referenced decision of the Universal Service Administrator (the “Administrator”), which upheld a denial by the Administrator’s Schools and Libraries Division (“SLD”) of Sweetser’s application for e-rate funding for Funding Year 2005 - 2006. The reasons in support of this request for review are set forth below. Any communications regarding this request for review may be directed to the undersigned.

Overview and Relief Requested

Sweetser, a Maine not-for-profit corporation, operates a special purpose school which qualifies for participation in the e-rate program and for which the e-rate application was submitted to SLD. For funding year 2005 – 2006, Sweetser filed a Form 470 electronically in January of 2005. Although the Form 470, which

serves as a public notice to trigger a competitive bidding process, can by its nature only be effective prospectively, the drop-down menu on SLD's electronic filing system for designation of the funding year at that time contained, in addition to the valid current year (2005 – 2006), options for filers to select invalid prior years. When Sweetser's Form 470 was filed, inadvertently, the prior year, 2004 – 2005, one of the invalid years which SLD made available, was selected. A confirmation letter received shortly thereafter from SLD confirmed receipt of the Form 470 filing, gave no notice that the filing was not valid, and stated a vendor selection / contract date of February 9, 2005. Sweetser duly filed its funding application in February, unaware of any invalidity in the Form 470 filing. This was only discovered in June of 2005, when SLD notified Sweetser that the funding application was denied because there was no outstanding Form 470 filed for the current year.

In light of SLD's electronic filing system having facilitated an erroneous filing and SLD's having neglected to advise Sweetser of the error on a timely basis, Sweetser's Form 470 ought to have been considered by SLD to have been properly filed for funding year 2005 – 2006. Alternatively, under these particular circumstances, a waiver of the Form 470 filing requirement ought to be granted to Sweetser for filing year 2005 – 2006. SLD's decision to deny Sweetser's funding application ought to be reversed and the application ought to be referred back to the Administrator for further processing accordingly.

Argument

Review of Significant Factual Circumstances

Sweetser's Form 470 for funding year 2005 – 2006 was filed with SLD on January 12, 2005. As noted in the attached affidavit of Paul Diou¹, the Form 470 was filed using SLD's

¹ A number of the factual circumstances are set out in the attached affidavit of Paul Diou. Although Mr. Diou indicated to SLD that Sweetser had inadvertently indicated the incorrect year in its Form 470 filing, the reference to inadvertence was ambiguous in that it did not fully detail the circumstances which led to the erroneous filing, for which SLD bears some responsibility, nor did it fully describe the misleading effect of the filing confirmation letter which SLD sent to Sweetser. The information in the affidavit is consistent with and clarifies ambiguities in the previously submitted information. Accordingly, it is appropriate for this additional information to be considered on appeal. *See, Request for Review by Roosevelt Elementary School District No. 66*, File No. SLD-245714, CC Docket No. 02-6, Order, paragraph 5 (Wireline Comp. Bur., July 26, 2005); *Request for Review by the Shawano-Gresham School District*, File No. SLD-292913, CC Docket No. 02-6, Order, paragraph 5 (Wireline Comp. Bur., Feb. 5, 2004).

electronic filing system. The electronic filing system designed by SLD for Form 470 did not permit direct entry of the applicable filing year. Rather, the system employed a “drop down menu” which, when the filing year entry was selected, provided a list of possible funding years which could be designated. The list at that time was not limited to just the immediately upcoming filing year. It included also all prior funding years and allowed them to be designated. Completely accidentally, Mr. Diou indeed did click on the preceding funding year rather than the upcoming funding year. The system accepted this erroneous designation without any indication of an error having been made. Mr. Diou did not realize that any error had been made.

Quite notably, SLD itself apparently recognized at some later time that allowing erroneous funding year designations was a design fault in the electronic filing system. Mr. Diou recently conducted a trial run on the Form 470 filing system. He found that the drop down menu for designation of the funding year now includes only the immediately upcoming funding year. Prior funding years are no longer included and thus are no longer allowed to be designated.

On January 17, 2005, SLD issued to Sweetser a Form 470 Receipt Notification Letter. This notification letter confirmed Sweetser’s 01/12/2005 posting of its Form 470 and stated that the allowable vendor selection / contract date was 02/09/2005. No notice was given that the Form 470 had not been duly filed. Mr. Diou accordingly proceeded to submit the funding application, Form 471, in February of 2005, still unaware that the Form 470 would not be accepted. SLD did

not notify Sweetser that the Form 470 was not accepted until SLD issued its funding commitment decision letter, denying Sweetser's funding application, on June 27, 2005.

1) **SLD's Flawed Design Of Its Electronic Filing System Facilitated Sweetser's Inadvertent Entry Of An Incorrect Filing Year**

SLD's design of its electronic filing system, at the time when Sweetser tried to file its Form 470 for funding year 2005 – 2006, was flawed in allowing invalid funding years to be selected. This design flaw directly facilitated Sweetser's inadvertent selection of the incorrect funding year.

The purpose of Form 470 is to give notice of an applicant's intent to file a funding request. When Form 470 is filed, an appropriate notice is placed on SLD's website to permit vendors to submit competitive bids to provide the indicated services to the applicant. This competitive bidding process can only function prospectively. Bids can only be offered for services that are yet to be performed – they cannot be offered for periods which have already passed. It makes no sense, and constitutes a clear and significant design defect in the electronic filing system, to allow prior funding years to be selected when a Form 470 is submitted electronically.

SLD appears itself to have acknowledged this defect in the electronic filing system. The defect has been corrected. The electronic filing system no longer allows a prior funding year to be selected when Form 470 is filed electronically. The only year which now appears in the drop-down menu for funding year is the immediately upcoming funding year. This proper design for the funding year menu,

had it been in place when Sweetser filed Form 470 for funding year 2005 – 2006, would have avoided the filing error which accidentally occurred.

2) **SLD Neglected To Notify Sweetser Of The Filing Error And Misled Sweetser As To The Validity Of The Form 470 Which Had Been Filed**

In January, 2005, SLD gave Sweetser written confirmation of the filing of Sweetser's Form 470. The confirmation letter gave no notice of any problem with the Form 470 which had been filed. To the contrary, the confirmation letter stated that the allowable vendor selection / contract date was 02/09/2005. Sweetser understood this in good faith to indicate that the competitive bidding process date had been duly set and that Sweetser properly could submit its Form 471 for the upcoming funding year (2005 – 2006) following the stated vendor selection / contract date. It would have made no sense whatever for SLD to have specified a vendor selection / contract date for a prior funding year. Sweetser accordingly proceeded to file its Form 471 for funding year 2005 – 2006 once the stated vendor selection / contract date of 02/09/2005 had passed.

SLD never gave Sweetser any notice of a problem with the Form 470 which Sweetser had filed for funding year 2005 – 2006 until SLD issued its funding commitment decision letter, denying Sweetser's funding application, on June 27, 2005. This was long after the filing window for Form 470 had closed for funding year 2005 – 2006. SLD's long delay in notifying Sweetser of any problem with the Form 470 which had been filed prevented Sweetser from rectifying the filing error on a timely basis.

3) Under The Instant Circumstances, Sweetser's Form 470 Ought To Be Deemed Properly Filed For Funding Year 2005 – 2006, Or Alternatively, The Form 470 Filing Requirement For Funding Year 2005 – 2006 Ought To Be Waived

SLD's own design flaw in its electronic filing system facilitated Sweetser's inadvertent submission of Form 470 for funding year 2005 – 2006 with the incorrect funding year selected. SLD's confirmation letter for the filing, sent in January, 2005, failed to give notice of any error or problem – to the contrary, SLD's indication of an upcoming vendor selection / contract date of February 9, 2005, misled Sweetser into understanding that a properly filed Form 470 was in place for funding year 2005 – 2006. SLD's long delay, until late June, 2005, in informing Sweetser of the problem with the Form 470 which had been filed made it impossible for Sweetser to correct the error and submit a new Form 470 within the filing window. Under these circumstances, the Form 470 which had been filed ought to have been found by SLD to have been properly filed for funding year 2005 – 2006. In the alternative, the Form 470 filing requirement ought to be waived for Sweetser for funding year 2005 – 2006. *See, Request for Review by Totowa Borough Public Schools*, File No. SLD-265823, CC Docket No. 02-6, Order, paragraphs 5 - 6 (Wireline Comp. Bur., December 15, 2004).

Conclusion

For the foregoing reasons, the decision of the Administrator upholding SLD's denial of the funding request ought to be reversed and this matter ought to be referred back to the Administrator for further processing accordingly.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert Jay White", written in a cursive style.

Robert Jay White, Esq.

Compliance Officer

Sweetser

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Date: December 12, 2005

Attached: Affidavit of Paul Diou

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Now comes Paul Diou and states as follows of his own knowledge.

- 1 -

possible funding years which could be designated. The list at that time was not limited to just the immediately upcoming funding year. It included also all prior funding years and allowed them to be designated. Completely accidentally, I clicked on the preceding funding year (2004 – 2005) rather than the upcoming funding year (2005 – 2006). The system simply accepted this erroneous designation and gave no indication of any error or problem. I did not realize that any error had been made.

3. Soon after I had filed the Form 470, in January, 2005, I received a letter dated January 17, 2005, from SLD. This was a Form 470 Receipt Notification Letter. This notification letter confirmed that Sweetser's Form 470, filed on 01/12/2005, had been posted to SLD's website. The letter stated that the allowable vendor selection / contract date was 02/09/2005. The letter did not contain any notice that there was any error or problem with the Form 470 which had been filed. I was aware that the purpose for filing the Form 470 to be posted on SLD's website and for specifying the vendor selection / contract date was to allow a competitive bidding process to occur for the services described on the Form 470. This only makes sense if the bidding is to occur for services to be performed in the future – that is, for the upcoming funding year. It would make no sense to me to have competitive bidding applied to a prior year. Consequently, I understood from SLD's Receipt Notification Letter that Sweetser's Form 470 was in place and properly posted for the upcoming funding year, 2005 – 2006. I prepared and submitted Sweetser's Form 471 for funding

year 2005 – 2006 in February of 2005, after the vendor selection / contract date and within the filing window. When I filed the Form 471, I was still unaware that there was any problem with the Form 470 which had been filed.

4. At the end of June, 2005, I received a funding commitment decision letter from SLD dated June 27, 2005. This funding decision letter denied Sweetser's funding application entirely. The reason given was that the Form 470 I had filed had been designated for the prior funding year, so that there was no Form 470 considered to have been properly filed for funding year 2005 – 2006 to support the Form 471 for funding year 2005 – 2006. This funding decision letter was the first time SLD provided notice of any error or problem with the Form 470 I had intended to file for funding year 2005 – 2006. Until I received the funding decision letter, I was unaware of any error or problem with the Form 470.
5. After I learned of the problem with the Form 470, I conducted a trial run on SLD's electronic filing system for Form 470. I tried to start to enter a test case Form 470. I did this in the fall of 2005. When I came to the entry point for the funding year, I found that the drop down menu for designation of the funding year had been changed by SLD. Now, the drop down menu included only one possible choice, the immediately upcoming funding year. Prior funding years were no longer included and thus were no longer able to be designated.

Signed under the pains and penalties of perjury.

Paul Diou

Paul Diou

December 12, 2005